

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

WILLIAM JAMES GAERTNER, Jr.

Petitioner,

v.

Civil No. 05-71940-DT
HONORABLE LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

CAROL HOWES,

Respondent,

/

ORDER GRANTING EXTENSION OF TIME

On May 25, 2006, the Court denied Petitioner's motion for reconsideration. The deadline for filing a notice of appeal was June 26, 2006. On July 10, 2006, Petitioner filed a notice of appeal. The notice contained a cover letter which stated that Petitioner filed a notice of appeal on June 19, 2006, but that it had not been received by the Court through no fault of his own. Petitioner also provided a memo from the Michigan Department of Corrections stating that Petitioner had provided it with certified mail on June 19, 2006.

Federal Rule of Appellate Procedure 4(a)(5) states that a district court may extend the time to file a notice of appeal if:

- (i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and
- (ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

The Court will construe the cover letter filed by Petitioner on July 10, 2006 as a motion for extension of time pursuant to Rule 4(a)(5). The motion was timely, as it was filed within 30 days

of the expiration of the time to appeal. The Court also finds that Petitioner has shown good cause warranting an extension, because the first notice of appeal was mailed within the time to appeal. Court's entry of Judgment. Therefore, Petitioner's motion for extension of time is HEREBY GRANTED.

IT IS SO ORDERED.

s/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: December 14, 2006

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on December 14, 2006.

s/Marie E. Verlinde
Case Manager
(810) 984-3290